

September 25, 2018

**Via Electronic Mail**

Kate Bailey  
Trial Attorney  
United States Department of Justice  
Civil Division – Federal Programs Branch  
20 Massachusetts Avenue, NW  
Room 7214  
Washington, D.C. 20530

Re: Outstanding discovery matters that require resolution in *State of New York, et al. v. United States Department of Commerce, et al.*, 18-cv-2921 (JMF).

Dear Ms. Bailey:

Plaintiffs write to enumerate the many outstanding discovery issues in this matter and to request that Defendants make themselves available for a meet and confer no later than tomorrow to discuss each of these issues. As Defendants are aware, there are less than three weeks remaining in the discovery period, which closes on October 12. Plaintiffs have raised all of these issues with Defendants in the past, many of them on multiple occasions. Given the extremely short time remaining in the discovery period, the parties must confer on these issues and obtain resolution or Plaintiffs may seek redress from the Court.

1. **Deposition dates.** We have requested the deposition dates for the fact deposition of Secretary Ross (see John Freedman email 9/21) and received no response. In addition, we would like to confer regarding the date proposed by Defendants for Dr. Abowd's expert deposition.
2. **Department of Justice documents.** We would like to confer on the outstanding materials responsive to the Department of Justice and John Gore subpoenas (see John Freedman emails dated 9/11, 9/16, 9/21).
3. **Supplemental searches to complete the administrative record.** Defendants agreed on September 10 to run the agreed-upon supplemental searches of additional search terms and additional custodians (see John Freedman 9/11 email; Kate Bailey 9/10 email). These included:
  - a. *Secretary Ross Materials.* To the extent these supplemental searches needed to be prioritized, Plaintiffs requested that Defendants prioritize running supplemental terms on Secretary Ross's email, as well as that of his two assistants (Ms. Alexander, Ms. Leach), Mr. Comstock, and Ms. Teramoto (see John Freedman 9/21 email).

- b. *Additional priority custodians.* Plaintiffs also asked that the Langdon, Park-Su, and Willard searches be prioritized (see Elena Goldstein 9/21 email, requesting priority be given to these custodians).
  - c. *Other outstanding custodians.* The remaining supplemental searches are still pending, with no update from Defendants on expected timing; these include materials from additional custodians (Branstad, Lenihan, Velkoff, Raglin), as well as the supplemental search terms on other custodians (see John Freedman 9/11 email; Kate Bailey 9/10 email).
- 4. **Remaining Commerce Department documents.** On the parties' August 31 meet-and-confer call, Ms. Federighi explained that there were further Commerce Department responses to Plaintiffs' requests for production, and promised to follow up the following week (see John Freedman 8/31 email). Plaintiffs followed up on 9/21, but we have received no response, no production of records, and no further description of the outstanding materials (see John Freedman email 9/21 email).
- 5. **Responses to the Court's order to produce focus group materials.**
  - a. At the status conference on September 14, the Court ordered Defendants to produce responsive focus group materials by September 20. On the evening of September 20, Ms. Bailey emailed records responsive to the Court's order to the Plaintiffs, but NYAG counsel did not receive one of the files, and we were unable to open the attachments we did receive. Defendants agreed to send these files to NYAG on a CD by overnight mail, which we have not received.
  - b. In addition, we understand that there are additional CBAM focus group and public opinion documents that have not yet been produced. Particularly in light of Defendants' proposal that the 30(b)(6) deposition conclude next week, all documents on this subject must be produced.
- 6. **Stakeholder briefing memos.** Plaintiffs previously requested materials similar to AR 3907 that were withheld on deliberative process privilege grounds (see John Freedman email 9/16). We have not received these materials or a date by which Defendants will produce them.
- 7. **Expert disclosures and depositions.** Plaintiffs seek to confer on several open issues relating to expert disclosures, including:
  - a. Defendants' refusal to identify the sources supporting Dr. Abowd's opinions (see Dale Ho 9/22 email; Kate Bailey 9/24 email).
  - b. Plaintiffs have received no response to our request for consent that experts designated by plaintiffs in other jurisdictions will not be deposed more than once (see Elena Goldstein 9/21 email).

We look forward to speaking about these matters with you very soon.

Sincerely,

/s/Elena S. Goldstein  
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